REMARKS

I. Introduction

Claims 12-14 are pending in the present application after cancellation of withdrawn claims 15-22 in this Amendment. Applicants have amended claim 12.

In view of the following remarks, it is respectfully submitted that claims 12-14 under consideration are allowable, and reconsideration of these claims is respectfully requested.

II. Rejection of Claims 12-14 Under 35 U.S.C. § 102(b)

Claims 12-14 were rejected under 35 U.S.C. § 102(b) as being anticipated by Hedstrom, U.S. Patent No. 5,003,483 ("Hedstrom"). Applicants respectfully traverse this rejection, for the following reasons.

To anticipate a claim under § 102(b), a single prior art reference must identically disclose each and every claim element. See Lindeman Machinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claim invention, arranged exactly as in the claim. Lindeman, 703 F.2d 1458 (Emphasis added). Additionally, not only must each of the claim limitations be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy , 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Independent claim 12 is directed to a method for controlling the speed of a vehicle. In the method, a service brake of the vehicle is activated when the actual speed of the vehicle exceeds a predefined setpoint speed by more than a predefined non-zero speed difference,

and in the case of the actual speed of the vehicle exceeding the predefined setpoint speed, the service brake is <u>prevented from being activated</u> if the actual speed of the vehicle <u>exceeds the predefined setpoint speed by less than the first predefined speed difference</u>.

The Hedstrom reference does not identically disclose (or even suggest) the above-identified claim features; instead, the Hedstrom reference states in numerous locations that a braking device is applied <u>as soon as</u> a vehicle speed exceeds a target speed, as follows (emphasis added below):

> By means of the abovementioned arrangement, there is thus formed a constant speedkeeping target value which, in a manner later described, is used for <u>regulation of the vehicle's braking device 4 whenever the vehicle speed exceeds the target value</u>. (Col. 3, lines 9-13).

> When the system, following actuation of the brakes, has once again received a real target value stored within the memory, <u>the braking device will be applied as soon as the vehicle's speed exceeds the target value</u>, whereas the constant speedkeeping function ceases once the accelerator pedal is re-actuated. (Col. 3, lines 24-29).

> <u>If the vehicle speed V is greater than the target value Vm</u>, the program then proceeds to the operation stage 48, <u>the vehicle's braking device 4 is applied</u>, designated in the figure as BR, after which the program goes on to the operation stage 49. (Col. 4, lines 3-8).

> Stage 48 can itself contain a number of sub-elements, in which <u>the brake application level within the vehicle's braking device 4 is regulated in proportion to the exceeded target value</u>. (Col. 4, lines 19-22).

Thus, because the Hedstrom reference states that the braking device is activated <u>as soon as</u> the vehicle speed exceeds a target value, the Hedstrom necessarily cannot disclose (or even suggest) <u>preventing activation</u> of a service brake of the vehicle when the actual speed of the vehicle <u>exceeds the setpoint speed</u>, but by <u>less than the non-zero predefined speed difference</u>.

Therefore, the Hedstrom reference fails to identically disclose, or even suggest, every element of independent claim 12. For at least this reason, independent claim 12 and its dependent claims 13-14 are patentable under 35 U.S.C. § 102(b). Thus, withdrawal of the rejection against these claims is respectfully requested.

CONCLUSION

Applicants respectfully submit that claims 12-14 of the present application under consideration are now in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

The Office is authorized to charge any fees associated with this Amendment to Kenyon & Kenyon LLP's Deposit Account No. 11-0600.

Respectfully submitted,

(R. No. 36,197)

Dated: January 11, 2008

By: *Jong Lee for Gerard Messina*
Gerard A. Messina
Reg. No. 35,952

KENYON & KENYON LLP
One Broadway
New York, New York 10004
(212) 425-7200

CUSTOMER NO. 26646